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## Judge rules that West Lake Hills violated open meetings act

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A Travis County district court judge has ruled the city of West Lake Hills violated the Texas Open Meetings Act by discussing the property of Jeff and Carrie Peace in a 2013 executive session without proper notice.

In the Feb. 3 ruling, Travis County 261st District Judge Karin Crump also granted a motion stating the city committed a taking against the Peaces. Crump denied the couple's due process claim against the city.

A motion from the Peaces' attorney describes that June 12, 2013 discussion as "a critical meeting in which the city or its officials decided to effectively reverse the platting of the Peaces' property, and it was the last meeting before they actually did so. And yet there was simply nothing on the agenda that could remotely be interpreted to include a discussion of that nature."

The ruling gives traction to the Peaces, who have accused the city of using underhanded tactics to devalue their property and strong-arm the couple out of right-of-way along Bee Cave Road. The city is using eminent domain in a separate lawsuit to acquire approximately 30 feet of land to expand the road and add a sidewalk.

The city maintains it took no action following the June 12 meeting. City officials have also said the plat vacation in dispute — which reverted the property to one lot, when the Peaces thought they had two lots — was automatic.

The plat vacation goes back to a request put before council by the property's previous owner, Amy Hovis, also formerly the wife of a council member serving at the time. The Peaces purchased the land from Hovis in 2011.

“In 2011, the City Council approved Amy Hovis’ request to vacate her previous replat, thus returning the property from one lot back into two,” City Attorney Alan Bojorquez said in an email. “However, that vacation of the replat was expressly conditioned on Ms. Hovis conveying right-of-way to the city (a donation, or dedication) ... ultimately, she failed to deliver.”

The Peaces have until Feb. 12 to file a motion detailing the relief they seek in reference to the open meetings act violation. A pre-trial hearing will take place Feb. 22.

“The open meetings act can void the actions of a city,” city attorney Bradford Bullock said. “We disagree there was an open meetings violation. It’s been the city’s position and remains so that there wasn’t a vote to void the Peaces’ plat vacation because it wasn’t necessary, because the law of the state of Texas as well as city ordinances already provided that the plat was invalid by operation of law.”

A “taking” refers to the government acquiring private property and failing to fairly compensate the owner. Bullock said he believes the ruling is in reference to the city allowing the Peaces’ property to remain platted as one lot rather than two, as they understood their property to be when they purchased the land from Amy Hovis.

City Attorney Alan Bojorquez said the land automatically reverted to one lot because the council originally granted Hovis the plat vacation to two lots contingent upon her donating right-of-way to the city, a promise she never fulfilled. Bullock said the city offered several times to change the Peaces’ property back into two lots, but the Peaces have refused.

“The plaintiff assumes the burden of proof of what the fair market value is of the damage to their property, if any,” Bullock said. “They have to demonstrate what the value is of what was taken. We don’t know what the judge thinks was taken, so it’s hard to say.”

Whether or not the city appeals the decision may depend on what damages the jury thinks the Peaces deserve, Bullock said.

“We are pleased that Judge Crump recognized the city’s constitutional violation and open meetings violation,” the Peaces said in a statement emailed by their attorney, Jim Schober. “We don’t yet know whether the city will appeal, but we

hope the court's ruling will encourage the city to reconsider its approach to the matter. Otherwise, we look forward to presenting the rest of our case to a Travis County jury."

The judge also granted motions to the city, dismissing the Peaces' equal protection claim and dismissing "any claim of plaintiffs for monetary damages relating to a violation of (the open meetings act) by defendant city of West Lake Hills."